



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/143020

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance/IRIS, a hearing was held on September 25, 2012, via telephone.

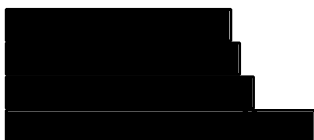
The issue for determination is whether the IRIS agency properly denied the following goods/services requested by the Petitioner:

1. Four pairs of tennis shoes at a cost of \$440;
2. X-Box 360 and Kinect gaming components at a cost of \$650;
3. Guitar and guitar lessons at a cost of \$850; and
4. Sound damping room at a cost of \$500.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jill Spear

Bureau of Long-Term Support
1 S. Pinckney St., Ste 320
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County. Petitioner is enrolled in the Include, Respect, I Self-direct (IRIS) program.
2. Petitioner has diagnoses that include Down Syndrome, hypotonia, halluxabductovalgus to both feet, pronation and metatarsalgia. Petitioner also has hearing/speech impairments.
3. On November 26, 2011, the Petitioner submitted a request to the IRIS agency to fund the following items in his Individual Service and Support Plan (ISSP): 4 pairs of tennis shoes at a cost of \$440, an X-Box 360 gaming system at a cost of \$400 and Kinect gaming components at a cost of \$250.
4. On May 17, 2012, the Petitioner submitted a request to the IRIS agency for Speech Easy hearing aid batteries at a cost of \$60 and a sound damping room at a cost of \$500.
5. On May 21, 2012, the Petitioner submitted a request to the IRIS agency for an acoustic guitar and guitar lessons at a cost of \$850.
6. On August 2, 2012, the agency issued a Notice of Action to the Petitioner notifying him that the agency determined that the requested shoes, batteries, X-Box and gaming components, guitar and guitar lessons, and sound damping room would not be funded in his ISSP effective July 9, 2012.
7. On August 10, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Petitioner is a participant in the IRIS (Include, Respect, I Self-Direct) program. The Medicaid Eligibility Handbook (MEH) describes the IRIS program:

37.1.1 Introduction

The Include, Respect I Self-Direct (IRIS) program is a fee for service alternative to Family Care, PACE or Partnership for individuals requesting a long-term care support program in Family Care counties.

Under IRIS, the participant will be able to access services comparable to those provided under the Home- and Community-Based Waivers (HCBW) while managing an individual budget to meet their service needs.

The IRIS program is governed in part by the Code of Federal Regulations (CFR). Relevant here is this section of 42 CFR 440.180:

(b) Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

(9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.
42 CFR §440.180(b).

In furtherance of implementing this law, especially subsection (9), the IRIS program has developed policies regarding funding of goods and services. See Policy: SC 16.1, IRIS Funding for Goods, Supports and Services. That policy requires that a requested item be designed to meet the participant's functional, vocational or medical or social needs and advance outcomes in the individual service plan.

Policy 16.1 discusses "customized goods and services" which may be covered by the program. These are goods and services that "enhance a consumer's opportunities to achieve outcomes related to living arrangement, relationship, community inclusion, work and functional medical status." In order to be covered as a customized good or service, it must meet each of the following 4 criteria:

1. The item or service is designed to meet the participant's functional, vocational or medical or social needs and also advances the desired outcomes in his/her ISSP;
2. The service, support or good is documented on the ISSP;
3. The service, support or good is not prohibited by federal and state statutes and regulations, including the state's procurement code;
4. The service, support or good is not available through another source or is not experimental in nature.

In addition to meet all four of the above-listed criteria, the good or service must meet at least one of the following criteria:

1. The service, support or good will maintain or increase the participant's safety in the home or community environment; or
2. The service, support or good will decrease or prevent increased dependence on other Medicaid-funded services; or
3. The service, support or good will maintain or increase the participant's functioning related to the disability;
4. The service, support or good will maintain or increase the participant's access to or presence in the community.

Additionally, the policy notes goods, supports and services that are not covered by IRIS which includes those that are covered by other insurance or by another agency and those that are not directly related to a participant's goals or needs.

The policy notes items that are considered "questionable" include:

"TVs, Electronics. Social or recreational purchases that are not related to a need or goal identified in the person-centered plan are not allowable. All requests for TVs, stereos, game systems, computers, etc. go through an exceptional plan review process. "

The federal Centers for Medicare and Medicaid Services (CMS) has issued an operations memo regarding the use of Medicaid waiver funds for the IRIS program for "individual directed goods and services." CMS SMD #09-007. That memo instructs agencies to make a finding that a requested good or service would decrease the need for other MA services and/or promote inclusion in the community and/or increase the participant's safety in the home environment. Funds may be used for items that increase a participant's independence or substitute for human assistance to the extent that expenditures would otherwise be made for the human assistance and the services or items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

Further, Policy SC 16.1 requires a participant's ISSP to "utilize services covered by the Medicaid State plan to the fullest possible extent before using waiver funds for any service that is waiver allowable."

1. Four pairs of tennis shoes

The Additional Consideration Process Form completed by the Petitioner regarding the request for tennis shoes indicates that the purpose of the request is to "walk without pain: foot support." It further indicates that the shoes will make the participant safer by providing more balance, less bunions and a decreased risk of the need for surgery. The form states that the shoes meet the Petitioner's functional needs and is not available through another source. Other cost-effective options were reviewed, i.e. cheaper shoes, but the Petitioner's representative noted that he wears them out more quickly and the cheaper shoes do not provide sufficient support. The Petitioner produced a letter from his podiatrist who opined that it is medically necessary for the Petitioner to wear extra depth anti-pronation type shoes to fit his orthoses and reduce the amount of pronation of his feet.

At the hearing, the Petitioner's mother testified on his behalf. She noted that the Petitioner wears orthotics which are covered by MA. She stated that the Petitioner develops bunions and therefore he needs a more supportive shoe to prevent development of bunions. She asserts that development of bunions requires trips to the podiatrist and the risk of surgery. She testified that they can get a custom-made adaptive shoe but it is more costly than getting a higher level "off the rack" shoe. She also notes that the same type of shoes were previously funded by the IRIS agency.

The agency contends that it can fund shoes that are "specially adaptive" as a customized good but the Petitioner has not requested a specially adaptive shoe. Even when the shoe is adaptive in nature, the agency only funds the adaptive part of the shoe. The agency notes that if the cost of the regular shoes can be broken down into the components that support the Petitioner's functional or medical needs, the agency could possibly fund the adaptive nature of the requested shoes. However, the agency states that it has not been provided with a breakdown of these components. The agency further notes that shoes were previously approved early in the program as the result of lax quality assurance policies. The agency contends that the shoes are not sufficiently related to a long-term care need. They do not serve the Petitioner beyond what would be expected of the average consumer's shoes.

There is insufficient evidence for me to conclude that this request meets the criteria for funding. The request is not specific with regard to the shoes that are being requested. Therefore, it is difficult to determine if this is a cost-effective option. The Petitioner's mother has presented a credible argument that the Petitioner needs a certain type of shoe to meet his medical needs. The agency did not dispute that need. However, the request needs to be more specific. I cannot conclude from the evidence whether it is a better option to purchase four pairs of "off the rack" shoes versus a custom made, specially adaptive shoe. It is very possible that it custom-made shoes might better serve the Petitioner's needs and last longer, thus making them a more cost-effective option. Based on the evidence presented, I conclude that the agency's denial was reasonable without more specific information.

2. X-Box 360 Gaming System and Kinect gaming components

The Petitioner's Additional Consideration Process Form indicates that the Petitioner is requesting these items in order to build peer relationships. It also indicates that this will make him healthier because of exercise and social support groups. It notes that the Petitioner will be less dependent on day programs as an adult with a gaming system and it will give him something age-appropriate to do when friends visit. The Petitioner's representative noted it will meet the Petitioner's social needs.

At the hearing, the Petitioner's mother testified that this request is different from a recreational request. These items will help with his social development by allowing for peer bonding and fostering of social relationships.

The agency argues that a gaming system is recreational in nature and is not therefore covered under IRIS service definitions. It argues that a gaming system is not significantly tied to a functional, vocational, medical or social need and it is not a cost-effective means of supporting the Petitioner's outcome. The agency further notes that CMS has provided explicit instructions that MA waiver funds are not permitted for social or recreational purchases that are not related to a specific need or goal identified on the person-centered service plan.

I cannot conclude, based on the evidence, that the gaming system and components is specifically related to a disability of the Petitioner or that it is required to meet a specific functional or social need. I understand the Petitioner's mother's argument that it can serve a social purpose but it is not specifically related to his disability and there is insufficient evidence for me to conclude that this is the most cost-effective means for the Petitioner to achieve his goals or outcomes related to social needs. The agency denial of the gaming system and components is reasonable.

3. Guitar and guitar lessons

The same arguments are advanced by both parties with regard to a guitar and guitar lessons. The Petitioner's mother contends that a guitar and lessons will advance and develop the Petitioner's social skills and allow him to participate more in talent shows, social gatherings. It helps to fill his time which reduces his need for human assistance. The agency asserts that a guitar and lessons do not meet the definition of a customized good or service. It does not increase the Petitioner's independence or substitute for human assistance and it does not create social relationships. A guitar is considered recreational.

Again, I conclude that there is insufficient evidence to demonstrate that this request is specifically related to a disability of the Petitioner or that it is required to meet a specific functional or social need. Again, I understand the Petitioner's mother's argument. But without more evidence that this request is specifically related to the Petitioner's disability and that it is the most cost-effective means of meeting his goals or outcomes related to social needs, I must affirm the agency's denial.

4. Sound Damping Room

The Petitioner's Additional Consideration Process Form requested funding for six damping rugs to protect the Petitioner's hearing when he is playing drums. The agency found that this request does demonstrate a medical need and could potentially meet the customized good definition. However, the agency found that the requested level of funding is not appropriate. IRIS can pay for an average cost item necessary to meet a participant's outcome and long-term care need. The agency testified that it will fund sound damping rugs costing \$12.99 – 17.00. The Petitioner's mother indicated she attempted to get specifications for lower cost alternatives but was unable to get responses to her phone calls and emails. Therefore, she is uncertain if the lower cost alternatives are good quality.

The Petitioner's representatives did not present sufficient evidence to demonstrate that the Petitioner needs sound damping equipment at a cost of \$500 versus sound damping equipment that the agency is willing to fund at a cost of \$12.99 – \$17/ mat. The agency's denial based on the amount requested is reasonable. This does not prohibit the Petitioner from making a new request for this item based on less expensive alternatives.

I note for the record that the Petitioner also made a request for hearing aid batteries which the agency denied in the Notice of Action. At the hearing, the agency indicated that the batteries may be covered by the MA program and that it can cover them only if the Petitioner has a denial of coverage from the MA program. Based on this information, the Petitioner's mother withdrew her appeal of the agency's denial of the request for hearing aid batteries.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's requests for tennis shoes, an X-Box 360 and gaming components, a guitar and guitar lessons and a sound damping room.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

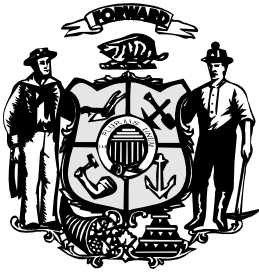
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: DHSDHABLT@wisconsin.gov, DHSDHABLT@wisconsin.gov - Long-Term Support



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 31, 2012.

Bureau of Long-Term Support